IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-5845

CATHERINE JACKSON, On Behalf of Herself and All Others Similarly Situated,

Petitioners,

v.

METROPOLITAN EDISON COMPANY, A Pennsylvania Corporation,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK

The Public Service Commission of the State of New York respectfully moves for leave to file a brief amicus curiae. In support of such motion, the Commission states as follows:

The Public Service Commission of the State of New York is a state agency whose duties include regulating the service obligations of electric, gas, telephone and pri-

vately owned water utilities within the State of New York. Such utilities under New York law as implemented by the Regulations of the Public Service Commission, may terminate service for nonpayment of bills, provided adequate notice of the proposed termination has been given to the consumer and the consumer has been afforded an opportunity to challenge the validity of the unpaid bills prior to the termination of service. In this respect, the Commission has recently promulgated new regulations not only requiring the utilities subject to its authority to codify their own procedures, but has also codified Commission procedures for handling the many complaints lodged with the Commission.

In view of New York's pre-termination of service procedures, which we believe conform to the principles of procedural fairness implicit in any requirements of due process, we have no occasion to address ourselves to the threshold issue presented of whether the respondent utility was acting under color of law within the meaning of 42 U.S.C. 1983. We are, however, concerned that if the Court holds that residential utility services may only be discontinued after compliance with due process procedures, that the specifics of such procedures not be spelled out in this case where the record reflects no consideration of the special problems and factors relating to utility discontinuances.

The respondent utility in this case apparently afforded petitioner no procedure whatsoever for having her bill dispute resolved prior to payment of the disputed bill. Accordingly, acceptance of petitioner's contention would presumably require a remand to give consideration to what procedures may be required. Inasmuch as the specific type of pre-termination procedures can have vital consequences to both utility customers and the utilities, it is important for this Court to adhere in this case to its normal practice of not deciding issues not presented to it.

In this respect, we believe it important for the Court to have some understanding of the issues raised in consumer billing disputes and request permission to file an amicus brief for this purpose.

Respectfully submitted,

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April 5, 1974

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BRIEF AMICUS CURIAE ON BEHALF OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK

INTEREST OF AMICUS CURIAE

The interest of the amicus curiae is set forth in the Motion to which this Brief is attached.

ARGUMENT

As we point out in our motion for leave to file this brief amicus, public utilities in New York may not dis-

continue service for non-payment of a bill while a customer's challenge of a bill is being considered by the utility and until after there has been subsequent opportunity to complain to the Public Service Commission. In view of our procedures which we believe conform to the principles of due process, we do not have occasion to take a formal position in whether 42 U.S.C. 1983 is applicable or whether termination of utility services must conform to due process. We are concerned, however, that the nature of any due process requirements applicable to such disconnect procedures should not be delineated in a case such as this where the special circumstances relating to utility billing disputes and disconnect procedures have not been fully explored. This brief is essentially limited to this interest.

Preliminarily, we note that the decision below rested in part on the view that utility services are not so vital as to be entitled to the protection of due process procedures before the termination of service for nonpayment of a disputed utility bill. The decision assumed in this respect that challenge of a disputed bill after payment would afford the customer adequate protection. But there is no explanation why a utility should be the stakeholder for any disputed amounts, at least pending appropriate consideration of a billing dispute. While the prompt collection of revenues owed to a utility is important from a public viewpoint since utility rates include allowances both for working capital and uncollectible accounts, these considerations do not compel any conclusion that consumers, whose opportunity to receive utility service is restricted to a single source by governmental action, should not have a meaningful consideration of a billing dispute before service is cut off[1] or that such prepayment procedures would be unduly burdensome.

[1] While expeditious and simple judicial proceedings might in some situations provide such a remedy, the Court below did not rest its decision on a view that the Pennsylvania procedures it described in n. 11, 483 F.2d at 760, afforded such a remedy.

In this respect, the New York Commission implemented new regulations last year to formalize a preexisting practice precluding the discontinuance of service by a utility pending its consideration of a billing dispute.[2] Moreover, service in New York may not thereafter be discontinued until the consumer has an opportunity to contest an adverse utility decision by filing a complaint with the Public Service Commission. The Commission's procedures permit a customer to present his side of a dispute to an impartial officer of the Commission, with the assistance of such persons as he chooses, and have that officer evaluate all material pertinent to the complaint, including such data as the company may be required to furnish so as to permit a reasoned determination. The provisions also afford the consumer an opportunity for a conference-type hearing and a more formal evidentiary-type hearing, if a dispute involves factual issues of a type that cannot reasonably be resolved otherwise.

But, as the Commission explained, *infra*, p. 12, its experience indicates that the informal hearing procedures, which had been utilized in New York for a number of years, can resolve most billing disputes. The great bulk of billing disputes do not involve factual matters where an adjudicatory-type hearing would be useful. For example, the accuracy of meter readings of the meters themselves are best resolved by having Commission inspectors make independent readings or meter tests, as contemplated by the New York statute.

CONCLUSION

This Court has recognized that the nature and type of hearing required by due process will depend upon all

[2] The Commission's opinion promulgating the regulation and pertinent regulations are reproduced in the appendix, *infra*.

relevant circumstances, taking into account the characteristics of the claimants, the nature of the controversies to be resolved, and the interests of those concerned in speedy and simple resolution of the disputes. *E.g.*, *Goldberg* v. *Kelly*, 397 U.S. 254, 267 (1970). Thus, if the Court determines that due process requires an opportunity for a pre-termination of service hearing on a billing dispute, the Court should not, in this case, mandate the specific types of hearing procedures which are required, since the record here indicates no consideration of the special problems and factors pertinent to utility discontinuance procedures.

Respectfully submitted,

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April 5, 1974

APPENDIX

APPENDIX

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on May 2, 1973.

COMMISSIONERS PRESENT:

Joseph C. Swidler, Chairman
Edward P. Larkin
William K. Jones
Carmel Carrington Marr
Harold A. Jerry, Jr.

CASE 26358—In the Matter of Rules and Regulations of the Public Service Commission, 16 NYCRR, in relation to complaint procedures.

OPINION NO. 73-16

OPINION, ORDER AND RESOLUTION ESTABLISHING RULES AND REGULATIONS PERTAINING TO COMPLAINT PROCEDURES

(Issued May 9, 1973)

BY THE COMMISSION:

On December 7, 1972, the Commission issued an order instituting a rulemaking proceeding regarding the manner in which complaints are handled by the Commission and the utilities it regulates. We noted in that order that while the Commission has long provided a forum for the consideration of consumer complaints regarding billing disputes and other aspects of utility operation, it seemed desirable to spell out the applicable procedures

and requirements in published regulations. We also indicated that the availability of such procedures should be publicized more extensively to give greater assurance that consumers will be made aware of their remedies in the event that they are dissatisfied with the utility's service or the handling of a dispute by a utility. The regulations now being adopted implement those purposes. As a result of comments received, the language of the original proposals has been modified substantially.

Notice of the proceeding and copies of the proposed rules were served on each utility or municipality affected thereby, as well as other groups expressing or likely to express a general interest in this matter.[1] In response to our invitation for comment, replies have been filed by the City of New York, the Bronx office of the Legal Aid Society, Consumers Union of United States, Inc., GET Consumer Protection, Inc., several utilities[2] and Leonard Sandweiss, an attorney on his own behalf. Additionally, comments of parties to Case 26158, *Telephone Service Standards*, were reviewed and those which were pertinent to this proceeding were considered in our deliberations.[3]

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[1] Copies were sent to public interest and consumer units, legal aid organizations, community interest and/or civic associations, and governmental units dealing with related problems.

[2] Rochester Gas and Electric Corporation (RG&E), Long Island Lighting Company (LILCO), New York State Electric & Gas Corporation (NYSE&G), Orange and Rockland Utilities, Inc. (O&R), Consolidated Edison Company of New York, Inc. (Con Edison), New York Telephone Company (NYT), Rochester Telephone Corporation (RTC), The Brooklyn Union Gas Company (Brooklyn Union), The St. Lawrence Gas Company, Inc., Long Island Water Corporation, Kingsvale Water Company, Inc. and various affiliates of Continental Telehpone System who filed identical comments.

[3] Among the comments reviewed were those filed by Grassroots Action, Inc., Consumer Assembly of Greater New York, and a joint filing by Harlem Consumer Education Council, Citizens Committee of Inquiry into Government and Business Delinquency and Media Workshop.

By letter dated March 1, 1973, those parties responding to our initial notice were invited to a conference to discuss revisions to the original proposals that the Commission had tentatively approved. As a result of this meeting, which was held at our New York City office on March 16, 1973, several parties filed additional comments.

This process has resulted in our adoption of rules as set forth in the resolutions which accompany this opinion. We have fully considered all of the comments received in response to our rulemaking notice and those offered at the conference. Many of the suggestions submitted were worthy of adoption; others have been considered and rejected as inconsistent with the purpose of the rules. We turn now to a discussion of the provisions we are adopting.

FORM OF COMPLAINT (Section 11.1)

The existing rules state that the Commission requires no particular form of complaint. While we have long accepted complaints made in person at the offices of the Commission or ones communicated by telephone, it seemed desirable to codify this procedure. Accordingly, the notice of proposed rulemaking provided a complaint would not have to be in writing. The City of New York suggested the regulations specify that a telephone complaint would provide a sufficient basis for the Commission to prevent a threatened service cutoff. This suggested modification is in accordance with present practice and the regulations will contain an affirmative statement that a complaint may be initiated by telephone or in person at Commission offices.

New York Telephone Company expressed some reservation about complaints that were not in writing in situations where a formal written reply to the complaint would be required. In such cases, the utilities will be served with at least a written summary of the complaint.

COMMISSION PROCEDURES (Section 11.2)

Section 11.2 of the rules that we are adopting describes the Commission procedures available for the resolution of complaints against utility companies and provides that as a norm discontinuance of service for nonpayment of a bill will be precluded while the Commission has a billing dispute under consideration.

Various comments filed with respect to the rules originally proposed correctly pointed out that those proposals did not clearly indicate the nature of the Commission procedures that would be available with respect to consumer complaints. We agree that the rules should specify the type of procedures that are available to the public and have spelled out such procedures in Section 11.2(b) and (c).

Section 11.2 (b) as adopted here describes the ombudsman-type complaint handling procedure under which most consumer complaints relating to disputed bills, charges, deposits or service problems are handled by the Commission. This provision spells out the right of a utility customer to present his side of a dispute to an impartial officer of the Commission, with the assistance of such persons as he chooses, and to have that officer evaluate all material pertinent to the complaint, including such data as the company may be required to furnish to permit a reasoned determination. The provision also affords an opportunity for a conference-type hearing attended by a Commission complaint officer, the complainant with friends or advisors of his choice and company representatives.

Experience indicates that the procedures described in Section 11.2 (b), which have been employed for a number of years, can effectively resolve most billing disputes. The new rules will, however, spell out more clearly the authority of the Commission's complaint officer to issue a binding directive to the utility. The great bulk of billing disputes do not involve factual matters where an adjudicatory-type hearing would be useful. For example, the accuracy of meter readings, or meters are best resolved by having Commission inspectors make independent readings or meter tests as contemplated by the Statute.[1] In many other situations, disputes are resolved after an independent Commission analysis or explanation of a bill in relation to the applicable rates.

We recognize that in a limited number of situations complaints, including billing disputes, may involve factual issues of a type that cannot reasonably be resolved except through the more formal evidentiary-type hearing described in Section 2.3 of the Commission's existing regulations. In other cases, the nature of the complaint may effectively preclude use of the procedures outlined in Section 11.2(b). Accordingly, Section 11.2(c) specifies that the Commission may call a Section 2.3 hearing where it determines that the procedures of Section 11.2(b) are not applicable to the dispute, or cannot reasonably resolve the issues raised.

With respect to complaints involving billing disputes where discontinuance of service has been threatened, the rules provide that the Commission will call a public hearing where, in the Commission's view, evidentiary issues relating to the dispute cannot reasonably be resolved by the procedures described in Section 11.2(b), unless judicial resolution of the dispute is deemed more appropriate. In this respect, it should be recognized that many disputes are subject to concurrent administrative and judicial jurisdiction. Accordingly, the Commission may find it necessary or desirable to disclaim jurisdiction over a particular dispute because of pending judicial proceedings. While we are reserving the right to decline jurisdiction in some instances requiring full evidentiary hearing in

[1] Public Service Law, Sections 67 and 89(d).

favor of judicial proceedings, such a declination of jurisdiction would not be appropriate where the nature of the complaint or the sums involved would preclude a meaningful avenue of relief in a particular case.

We believe that the provisions of Section 11.2(b) and (c) described above will provide consumers with the type of impartial hearing urged by the consumer groups and the City of New York in their comments, although all of the procedural provisions urged by some of the participants have not been incorporated. The regulations which we adopt are designed to provide consumers with a meaningful opportunity to be heard with respect to disputes with utilities yet retain the necessary flexibility to permit investigation and determination of disputes in a manner appropriate to the circumstances of individual cases.

In its response to the proposed rules which accompanied the rulemaking notice, the City of New York urged that a brief, written decision be provided in all cases stating the basis for the conclusions of the determining officer. We are incorporating the substance of this recommendation, which actually reflects present practice, in the final description of Commission procedures. Written determinations are now routinely provided to complainants in gas, water and electric cases. In the case of communication service billing disputes, which frequently involve very limited portions of a bill, written determinations are not routinely provided since many such disputes are resolved through telephone contacts. However, written determination will be furnished if requested. The second paragraph of Section 11.2(b) of the rules being adopted, together with the explanatory comment, provide for a continuation of the present practice.

As we stated above, the rules being adopted specify in Section 11.2(d) that as a norm the Commission will preclude the shutoff of service while a billing dispute is

under consideration. Indeed, as we observed in the order instituting this proceeding, the major utilities, under a long-standing working arrangement with the staff, have upon request of the staff refrained from discontinuing service for nonpayment of disputed amounts while the billing dispute was under consideration at the Commission. In fact, the filing of billing complaints with the Commission has routinely resulted in a suspension of discontinuance procedures by the utilities. We anticipate a continuation of this routine practice but, in the future, the suspension of discontinuance procedures would plainly be at the direction of the Commission's staff, not simply at its request.

In drafting the rules originally proposed, the provisions for precluding discontinuance of service until a billing dispute had been decided were written in purely discretionary terms without indicating the normal practice that had been described in the explanatory order. Legal Aid argued that such unfettered discretion was unwarranted. We agree. In the final rules, the pertinent provision specifies that the Commission will preclude discontinuance of service during its investigation of a billing complaint, absent a showing of unusual circumstances. Thus, our normal practice will be apparent to anyone reading the rules. But we do not agree with Legal Aid and Consumers Union that the regulations should rigidly preclude discontinuance of service until a complainant has been heard with respect to a billing dispute. The City of New York argued that staying service discontinuance pending resolution of a complaint should be required unless it clearly appeared that the complaint was frivolous or without merit and also recognized such stays should not be automatic under the regulations as to encourage patently unfounded complaints designed merely to delay payment of amounts properly billed. We agree that the rules should preserve some discretion in the Commission in this respect, in large

measure to prevent an abuse of Commission processes. For example, under Section 11.2(d) payments of undisputed portions of a disputed bill may be required by the Commission's staff as a condition for avoiding a cutoff of service.

In the original proposals, the interim relief provision specified that pending resolution of any complaint, the Commission could require appropriate interim relief without hearing or formal order. A number of utilities objected to the breadth of this provision, pointing out that the complaints cover a broad spectrum of complaints other than billing disputes, including rate challenges. While the Commission should be free to fashion interim relief as to all types of complaints, we agree that such relief will not necessarily be appropriate for all complaint situations without hearing or formal order. Accordingly, the rules being adopted indicate the availability of interim relief with respect to all complaints without specifying procedures except as to billing complaints where the discontinuance of service is involved.

It was also suggested by some of the utilities that a complainant should not be able to invoke the Commission complaint procedures until he had sought relief from the utility involved. Our experience indicates that many customer complaints are resolved between the customer and utility and we believe that the practice should be encouraged; however, we think it would be unrealistic to make such a requirement mandatory. The rules will therefore establish appropriate procedures to insure that disputes are resolved in a fair and reasonable manner whether directed to the utility or to the Commission.

UTILITY COMPLAINT HANDLING PROCEDURES

As stated above, we anticipate that most consumer complaints will initially be presented directly to the util-

ity concerned—that, of course, is the most desirable procedure. It is therefore important to insure that utilities establish procedures that will enable dissatisfied customers to obtain meaningful consideration and response from company personnel with respect to complaints directed to them. The rules adopted here, which are very similar to those originally proposed, require that such procedures be developed.

While each utility will be free to fashion procedures adapted to its particular operations, the rules provide some significant guidelines and standards. Thus, company procedures must provide that no discontinuance for nonpayment of a bill for service or a deposit will be made while the company is investigating a consumer's complaint about the bill, although a consumer may be required to pay undisputed portions of a bill. In addition, no notice of discontinuance for nonpayment is to be sent pending such investigation of a billing complaint. If a complaint is plainly repetitive, the procedures would not have to treat it as a new complaint for which discontinuance would have to be stayed. One of the comments received stated that utilities should not only be precluded from discontinuance of service because of a disputed bill, but that they should not be permitted to avoid this result by requiring a deposit on the basis of a disputed bill. We agree and company procedures should so specify.

We also specify that after the utility has completed its investigation and advised the consumer of its determination, the consumer must be afforded a reasonable time to either pay the amount found owing by the company or to invoke the Commission's complaint handling procedures; however, a complete new discontinuance notice is not required. Customers must similarly be provided with a reasonable time to pay prior to a discontinuance where payments are found due as a result of a Commission determination. Where a notice of discon-

tinuance had been sent prior to the company's determination or accompanies its determination, the company must advise the consumer of the availability of the Commission's complaint handling procedures.

A number of questions were raised in comments by the utilities relating to the payment of undisputed portions of disputed bills as related to discontinuance of service. For example, O&R expressed the view that a combination utility should be permitted to require payment of a gas portion of a bill when only the electric bill is in issue and vice versa. We agree and believe that the proposed rules are broad enough to require payment in such a situation. If a discontinuance notice has been sent, it will, however, be incumbent upon the utility to advise a customer of his obligation to pay the portion of a bill as to which there is no dispute and to afford him a reasonable opportunity to pay such undisputed amounts before any attempt is made to discontinue any of the services rendered. We expect the utilities to develop and codify reasonable procedures for such situations, but are not now specifying the form of the notification. If a utility sends a discontinuance notice for nonpayment of an undisputed portion of a bill, its notice should only ask for payment of the undisputed portion of the bill as a condition for retaining service. Additionally, we believe that where a customer obtains more than one utility service from the same company, a customer's failure to pay for one service, while a dispute is pending as to the other service obtained, would warrant discontinuance only for the service for which payment was admittedly due.

NYSE&G suggested that where agreement cannot be reached as to the undisputed portion of the bill, the proposed regulations should allow a utility to require payment of an amount based upon past usage or other relevant facts to enable a customer to avoid discontinuance of service. This proposal would permit utilities to determine unilaterally the "undisputed" portion of a bill. Such a procedure is plainly unacceptable. We recognize, however, that where resolution of billing disputes might require some time, both the customer and the company may be benefited by interim payment of some amount. In such circumstances, the standard suggested by NYSE&G might well provide a guide for how much the consumer would agree to pay in the interim. In addition, the Commission's staff acting under Section 11.2(d) might, in some situations, use such criteria to establish a minimum amount to be paid in order to preclude discontinuance of service.

At the conference, RG&E suggested that the proposed rules be modified to permit the Commission to require an appropriate deposit pending its investigation, as well as to compel the Commission to order payment of current or prior undisputed amounts as a condition to receiving a hold on discontinuance. We reject these suggestions. A deposit is not an appropriate condition to maintain service where a billing dispute exists. Nor is it appropriate for the Commission to lay down a rigid series of preconditions for invoking its authority, although in a given factual situation the payment of clearly undisputed amounts might be a condition for obtaining a stay of service discontinuance.

As noted above, the rules which we adopt will require utilities to provide appropriate notice to the customer regarding its determination of the complaint. Should the investigation conclude that the disputed service was rendered or that the disputed charge is proper, the utility may then require payment. In such a case, if discontinuance of service is or has been threatened, the utility will be required to advise the customer of the availability of the Commission's complaint handling procedures.

This provision was the subject of much controversy between the parties. Consumer representatives in general

would prefer that all discontinuance notices advise customers of Commission complaint handling procedures. We believe that such a course would be unwise since consumers should be encouraged to seek relief from the utility rather than the Commission in the first instance. Inclusion of such advice with every disconnect notice would, we believe, encourage initial resort to the Commission. Since service may not be shut off while the company is considering a complaint and for sufficient time after its determination to permit resort to the Commission, the consumer is afforded reasonable protection. To accomplish this purpose, the disconnect notice should plainly advise customers of the availability of company procedures to consider customer complaints prior to the proposed cutoff. As we stated in the order instituting this proceeding, we construe Section 143.2 of the existing regulations to impose such a requirement. Upon further consideration, we believe it desirable to amend Section 143.2(a)(1)(iv) so that it will more clearly reflect the intended meaning.

Some of the utilities also commented on this section of the proposed rules. New York Telephone Company stated that its business offices receive over 400,000 billing inquiries each month and the company feared, on the basis of the modified proposals circulated prior to the conference, that it might be required to provide formal determinations, containing notice of the availability of Commission procedures in all such cases, even where no service discontinuance was contemplated. The company advises that many of these bill inquiries are resolved quickly to the satisfaction of their customers and rarely do these situations involve threatened suspension of service. Rochester Telephone argues that other provisions of the rules will provide adequate publicity with respect to the Commission's complaint handling procedures and that notice at this stage of a billing dispute is not necessary. We have considered this matter and conclude that the

notice advising customers of the Commission's complaint handling procedures should be provided with the notice of determination in all cases where a notice of discontinuance of service has been sent prior to the company's investigation or is served with the determination. This will insure that consumers faced with possible loss of utility service will be made fully aware of the Commission's complaint handling procedures at a meaningful time. Limiting the advice notice to cases involving possible discontinuance of service will also resolve the very real problems of telephone companies with respect to inquiries regarding toll calls, message units and the like.

Some of the consumer groups argued that the notice period now required by the regulations before service may be discontinued is too short and urged that the period be lengthened to ten days. The matter of the length of the notice period prior to discontinuance was fully considered in Case 26230 and the time period adopted there has been in effect but seven months. We do not believe that a revision of the recently adopted regulations is required at this point.

Rochester Telephone Corporation contended that the waiting period of up to eight days after the company's determination of the complaint before service could be discontinued amounts to an unnecessary delay. We do not agree. It is appropriate to provide consumers with reasonable opportunity to make payment after the company's determination or, where deemed necessary, to seek review of the dispute at the Commission. Nor can we see any reason why telephone companies should be treated differently in this respect than other utilities as is suggested by RTC. With respect to water companies, the notice period prior to discontinuance contained in 16 NYCRR, Section 533.1 is ten days longer than that adopted for other utilities. Since the notices required after the utility's determination of the complaint may

reasonably be treated as a continuation of the original notice, requirement for such notices by water companies will be the same as that for other utilities.

Finally, we will require that utility procedures developed under this section be filed with the Commission for approval. Brooklyn Union and Long Island Water Corporation object to this requirement. Brooklyn Union maintains that the filing of its detailed procedures will eliminate the flexibility it requires to cope with the many different situations which are likely to develop. The company suggests that filing its procedures will seriously hinder its effectiveness in handling complaints and proposes that utilities be allowed to certify compliance with Commission procedures. Long Island Water Corporation considers the requirement unnecessary. We do not agree that filing operational procedures with the Commission will work to eliminate flexibility and hinder any utility's complaint handling system. Moreover, such a provision is necessary to insure compliance with our rules and to assure the public an opportunity to know the applicable procedures.

At the conference, the consumer groups urged that notice of the filing of utility procedures be provided as well as an opportunity for public comment and possible further public participation in the review process. We believe it is desirable that interested persons be given an opportunity to review and comment upon utility complaint procedures submitted to the Commission for approval. Accordingly, we will order utilities to provide a copy of their proposed rules to any person requesting same, and to make copies available for public inspection at company offices. In addition, we will require that companies publish newspaper notices which state that complaint procedures have been filed for review; that such procedures are available for public inspection at designated company offices and offices of the Commission;

and that interested persons may submit comments with respect to the procedures to the Commission. At this time, we believe it is premature to decide if any further conferences or hearings will be required with respect to utility complaint procedures. That decision will be made upon Commission review of the materials submitted by the company and the comments received from the public.

Our original proposal would have required a utility to file proposed changes in its internal complaint procedures with the Commission for review 60 days before the proposed effective date of the changes. Several utilities have suggested that procedural changes will likely be required from time to time as experience is gained in actual practice and that a 60-day period may result in unnecessary inconvenience, unfairness to consumers or needless financial loss to the utility. It was urged that the period be shortened to 30 days. We believe such a modification is appropriate.

PUBLICIZING COMPLAINT PROCEDURES

A number of utilities made comments on the requirement that companies periodically advise customers of the procedures available to register service or billing complaints. NYT and LILCO both indicate their belief that inserts with such information should be mailed annually. NYSE&G maintains that the word "periodic" is too general and that notice once every two years for existing customers would be adequate. Others, such as O&R, Brooklyn Union and Long Island Water, oppose periodic notification on the ground that it may lead to excessive complaints. Kingsvale Water Company asserts that periodic notice would create an unjustified expense for a small company and suggests that notification only be required when service is initiated.

It is important that consumers have adequate knowledge of the availability of complaint handling procedures

and we believe that periodic notification by utilities is required to provide such knowledge. This need outweighs the possibility that receipt of bill inserts of this nature may induce the filing of some unnecessary inquiries or complaints. We have also concluded that such notices should be provided on an annual basis.

New York Telephone also states that companies should be able to spread out the inclusion of bill inserts over several months so that all customers would not receive them at the same time. The proposed rules contemplated such staggering and have not been revised in this respect.

We will also require, as originally proposed, that the opening pages of telephone directories contain a conspicuous notice advising consumers of the availability of the Commission complaint procedures for all utilities. The format of this notice is subject to the approval of the Commission's Director of the Communications Division. LILCO, O&R and Brooklyn Union contend that this provision will encourage consumers to contact the Commission in the first instance. We believe that the wording of the directory notice should indicate that complaints which cannot be resolved by the utilities may be referred to the Commission. Thus, we feel that the notice will not necessarily have the impact anticipated by O&R, LILCO and Brooklyn Union. Rochester Telephone wants to retain sole control over the format and location of the notice in the preliminary pages of its directory. In view of the purpose of this notice, we view our original proposal as sound.

The Commission orders:

1. Each electric, gas, steam, waterworks and telephone corporation subject to the Commission's jurisdiction shall revise or modify its present terms and conditions of service to comply with the requirements of this Opinion and the resolutions adopted this date, and where necessary,

each utility shall file revised tariff schedules prepared in accordance with this Opinion and the resolutions adopted this date within 60 days of the date of this Order.

2. Each electric, gas, steam, waterworks and telephone corporation subject to the Commission's jurisdiction shall file twenty (20) copies of procedures implementing the respective requirements of Sections 143.8, 275.8, 434.8, 533.8 and 631.9 of Title 16 of the New York Code of Rules and Regulations, adopted this date, within 60 days of the date of this Order, and shall file schedules for implementing the respective requirements of Sections 143.9, 275.9, 434.9, 533.9 and 631.10(a) and (b), within 60 days of the date of this Order.

3. Each telephone corporation shall commence incorporating the notice required by Section 631.10(c) in the next directory for which inclusion of such notice is consistent with the closing date of the directory.

4. Each electric, gas, steam, waterworks and telephone corporation subject to the Commission's jurisdiction shall furnish a copy of the procedures filed in accordance with ordering paragraph 2, to any person requesting same, and shall make copies available for public inspection at its offices.

5. Each electric, gas, steam, waterworks and telephone corporation subject to the Commission's jurisdiction shall publish at least once, in a newspaper or newspapers of general circulation within its service territory, notice of the filing of the procedures required by ordering paragraph 2 within seven days of the date of filing. New York Telephone Company, Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation and General Telephone Company of Upstate New York, Inc. shall publish said notice in a newspaper or newspapers of general circulation located in each major population center within their respective service territories. Said

notice shall state that company procedures for handling customer complaints have been filed for review with the Commission, and are available for public inspection at designated company offices and at offices of the Public Service Commission. Further, said notice shall state that interested persons are invited to submit comments with respect to said company complaint handling procedures to the Public Service Commission, 44 Holland Avenue, Albany, New York 12208, within thirty days of the date of filing indicated in the notice.

6. Newspaper publication of the changes in tariff schedules required by ordering paragraph 1 hereof is hereby waived.

7. Except as granted in the foregoing Opinion and in the amendments to Title 16 of the New York Code of Rules and Regulations adopted this date, all suggested modifications, deletions, additions and objections are denied.

8. This proceeding is continued.

By the Commission,
(Signed) SAMUEL R. MADISON
Secretary

[SEAL]

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

RESOLUTION BY THE COMMISSION

(Pursuant to Pub. Serv. L. §§ 4, 20, 66, 71, 72, 80, 84, 85, 89(c), 89(i), 89(j), 92, 94, 96 and 97)

In the Matter of the Rules and Regulations of the Public Service Commission, 16 NYCRR, Chapter I.

At a session of the Public Service Commission held in the City of Albany on May 2, 1973, the Commission by a vote of its members,

RESOLVED:

1. Subchapter B of Chapter I of Title 16 of the New York Code of Rules and Regulations is amended by deleting the present Part 11 and substituting the following:

PART 11
COMPLAINTS—FORM AND PRACTICE

Section 11.1 *Form of Complaint*

The Commission requies no particular form of complaint; an individual consumer's complaint need not be in writing and may be initiated by telephone or in person at the offices of the Commission. A written complaint need not be verified. The following, however, should be furnished in support of a complaint:

(a) The name and address of the complainant or complainants.

(b) The name and address of the person or corporation complained against.

(c) The act or omission complained of, with the approximate date.

(d) What relief has been sought from the person or corporation complained of, and the response, if any, from such person or corporation.

Section 11.2 *Investigation, Hearing and Determination of Complaints*

(a) When a complaint is filed, it will be investigated by the Commission, through its staff, and may be served upon the person or corporation complained against with direction to satisfy the matter complained of or to file its answer thereto.

(b) In most instances, complaints concerning disputed bills, charges, deposits or service problems will be determined by such officers or employees of the Commission as the Chairman designates to act in its place. In exercising this function, the designated officers or employees may obtain the information required to make the necessary determination by conversation with the complainant or his or her representative by telephone or in person, supplemented where appropriate by written materials from the complainant, reports or documents from the utility (including such data as may be required by the staff at the request of the complainant or on its own initiative); through written complaints similarly supplemented; or through a conference conducted by the designated officer or employee at which the complainant, accompanied and assisted by such friend, adviser or attorney as he or she desires, and company representatives are present.

Officers or employees designated to consider complaints will afford both the complainant and the utility a fair and reasonable opportunity to present evidence pertinent to the complaint and to challenge evidence submitted by the other

party to the dispute. The complainant or utility complained of may otbain a written statement of the determination, including a brief reason for the conclusion.

[Comment: In many cases, consumer complaints are resolved to the satisfaction of all parties on the basis of a staff review of the complaint, examination of pertinent company records, and inspection of pertinent company equipment (including metering devices). Staff determinations in cases which appear to be in such a category are, in the first instance, made on the basis of such evidence. To the extent that the initial determination relied on data not previously disclosed, the parties are afforded an opportunity to challenge the evidence relied upon by staff.

Determinations of complaints relating to gas, electric or water billing disputes are, as a standard operating procedure, sent in writing to the complainant. In the case of communication service billing disputes, which frequently relate to only portions of a bill, many disputes are resolved primarily through telephone contacts, though written statements will always be supplied, if requested.]

(c) After receipt of the answer to a complaint, and where the procedures described in section 11.2 (b) are not applicable or cannot reasonably resolve the issues raised by a complaint, the Commission, on its own initiative, the recommendation of staff, or the request of the complainant or the utility, may call a public hearing upon notice utilizing the procedures set forth in section 2.3 of this Title. When evidentiary issues relating to a complaint regarding bills or deposits where discontinuance of service for nonpayment has been threatened cannot, in the Commission's view, reasonably be resolved pursuant to procedures described in section 11.2(b), the

Commission will, except where it determines that judicial resolution of the dispute would be more appropriate, call a public hearing upon notice utilizing the procedures set forth in section 2.3 of this Title.

(d) Pending resolution of complaints, the Commission may require appropriate interim relief. In the case of complaints regarding bills or deposits, the Commission, without hearing or formal order, may, and in the absence of unusual circumstances, will preclude discontinuance of service or the issuance of any notice of discontinuance during the Commission's investigation of such complaint, upon such terms and conditions as it deems appropriate.

[Comment: In implementing this provision, the Commission, for example, may require a customer, as a condition for avoiding a cutoff of service for nonpayment of a bill, to pay the undisputed portion of such a bill or, in appropriate circumstances, to pay such amounts as reasonably appear to reflect the cost of current usage.]

(e) The Chairman may designate such officers or employees as may be necessary to act in place of the Commission in regard to all complaints.

2. The Secretary is directed to file this Resolution with the Secretary of State.

3. A copy of this Resolution shall be filed in Case 26358.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

RESOLUTION BY THE COMMISSION

(Pursuant to Pub. Serv. L. §§ 4, 20, 66, 71 and 72)

In the Mattter of the Rules and Regulations of the Public Service Commission, 16 NYCRR, Chapter II.

At a session of the Public Service Commission held in the City off Albany on May 2, 1973, the Commission by a vote of its members,

RESOLWED:

1. Part 143 of Subchapter D of Chapter II of Title 16 of the New York Code of Rules and Regulations is amended:

(a) by deleting the present title of Part 143 and substituting the following:

NOTICES OF DISCONTINUANCE AND COMPLAINT PROCEDURES

(b) by deleting the present § 143.2(a)(1)(iv) and substituting the following:

§ 143.2(a)(1)(iv) the availability of company procedures to consider customer complaints prior to discontinuance, including the address and phone number of the office of the electric company the customer may contact in reference to his account; and

(c) by adding at the end the following new sections:
Section 143.8 *Billing Disputes*

(a) Every electric corporation shall establish procedures whereby any complaint filed with such corporation by any customer thereof in regard to any bill

for service rendered or any deposit required will be promptly investigated in an appropriate and fair manner, with the result of such investigation being promptly reported to the complaining customer. Such procedures shall allow the acceptance and processing of complaints submitted in simple manner and form. Regardless of whether a notice of discontinuance has previously been sent, the utility's procedures shall provide that pending the utility's investigation it shall not discontinue service or issue a notice of discontinuance; provided, however, the consumer may be required to pay the undisputed portion of a disputed bill or deposit to prevent discontinuance or the issuance of a notice of discontinuance.

(b) If, after the completion of such an investigation, the utility determines that the disputed service has been rendered, or that the disputed charge or deposit is proper, in whole or in part, the utility may require the full bill or deposit or the appropriate portion thereof to be paid; in such event, appropriate notice of the determination shall be given to the customer, and where notice of discontinuance of service has previously been sent, or is served with the determination, such notice shall include a statement advising the customer of the availability of the Commission's complaint handling procedures. The utility's procedures may provide for discontinuance of service if the customer fails to pay such required amount after receipt of proper notice, provided that a customer's service will not be discontinued until at least five days after notice of the utility's determination, where personal service is made upon the person supplied, or at least eight days after mailing of such a notice; and provided further that no discontinuance may occur if so precluded by the Commission pursuant to section 11.2(d) of this Title.

(c) The utility's procedures shall provide that, where the complaint procedures of the Commission have been invoked and it is determined that the disputed service has been rendered, or that the disputed charge

or deposit is proper, in whole or in part, a customer's service will not be discontinued for failure to pay the amount found appropriate until at least five days' notice of the Commission's determination, where personal service is made upon the person supplied, or at least eight days after mailing of such a notice.

(d) The procedures required to be established under this section shall be filed with the Commission for review. The Commission shall be advised of any substantial changes in such procedures thirty days prior to their proposed implementation to permit Commission review.

Section 143.9 *Publicizing Complaint Procedures*

(a) Every electric corporation shall, by a notice accompanying a regular bill or otherwise, advise each of its customers annually, unless otherwise directed by the Commission, of the procedures available to the customer to register complaints in regard to service or disputed bills. Such notice shall clearly state the means by which a complaint can be made to the Company and shall also advise the customer that, if after contacting the Company the customer remains dissatisfied, he may contact the New York State Public Service Commission. Such notice shall further state that the Public Service Commission has a staff available to give assistance in such matters, and shall also specify an appropriate address of the Public Service Commission.

(b) Prior to circulating the notice required by subdivision (a) of this section, each utility shall submit to the Commission for its approval the form of such notice and the intended program for its distribution.

2. The Secretary is directed to file this Resolution with the Secretary of State.

3. A copy of this Resolution shall be filed in Case 26358.